UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SCHERING-PLOUGH CORPORATION ERISA LITIGATION	:	Civil Action No. 03-1204 (KSH)(MF)

DECLARATION OF JOSEPH H. MELTZER

I, Joseph H. Meltzer, respectfully submit this Declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement, Certification of Settlement Class and Approval of Plan of Allocation (the "Final Approval Motion"), and Plaintiff's Motion For Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Award for Named Plaintiff (the "Fee Motion"). This Settlement, if approved by the Court, will resolve this class action in its entirety.

Pursuant 28 U.S.C. § 1746, I declare as follows:

1. I am a partner at Barroway Topaz Kessler Meltzer & Check, LLP ("BTKMC") and served as Lead Counsel for Plaintiff in the above-captioned litigation (the "Action").

2. I have personal knowledge of the matters set forth herein based upon my active participation in all material aspects of the Action. This Declaration is submitted in further support of both Plaintiff's Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement, Certification of Settlement

Class and Approval of Plan of Allocation ("Final Approval Memorandum"), and Plaintiff's Memorandum of Law in Support of Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards for Named Plaintiff ("Fee Memorandum").

3. The Settlement Agreement, executed on July 15, 2010 provides for the payment of $8.5 million ($8,500,000) into an interest-bearing escrow account ("Settlement Fund"), to be created for the benefit of the Schering-Plough Corporation Employees' Savings Plan (the "Plan"),[1] that will substantially benefit the Class. Attached hereto as Exhibit A is a true and correct copy of the executed Settlement Agreement. All capitalized terms not otherwise defined in this Declaration shall have the same meaning as ascribed to them in the Settlement Agreement.

4. The Settlement Agreement provides that Defendants shall pay the sum of $8.5 million, net of fees and expenses, directly to the Plan, which in accordance with the Plaintiff's proposed plan of distribution, will then be paid to the current and former Plan participants. Payments will be made immediately after all relevant orders become final.

5. In the course of prosecuting the Action, Lead Counsel, among other

---

[1] As noted in the Final Approval Memorandum, this definition includes the assets of the Schering-Plough Employees' Profit-Sharing Incentive Plan, which was merged into the Schering-Plough Employees' Savings Plan on or about September 10, 2004.

things, (i) researched and drafted the complaints in this Action, including the Consolidated Complaint, (ii) drafted comprehensive briefing in response to Defendants' motion to dismiss this Action, (iii) reviewed hundreds of thousands of pages produced by Defendants, (iv) drafted comprehensive briefing and argued vigorously regarding class certification before both the District Court and the Third Circuit Court of Appeals, (v) engaged in extensive settlement negotiations including four mediation sessions, and (iv) oversaw administration of the Settlement, including notice to Class members.

I. COMMENCEMENT OF THE LITIGATION

6. This action was commenced on March 18, 2003 by two Plan participants (Jingdong Zhu and Adrian Fields ("Plaintiffs")) who alleged that Defendants[2] breached their fiduciary duties under ERISA.[3] By Order entered July 30, 2003, the actions were consolidated, BTKMC was appointed as interim Lead Counsel for Plaintiffs and Lite DePalma Greenberg, LLC ("Lite DePalma") was

2 Defendants in this action are: Schering-Plough Corporation, the Schering Plough Employee Benefits Committee, the Schering-Plough Employee Benefits Investment Committee, Richard Kogan, Regina Herzlinger, Eugene McGrath, Donald Miller, Carl Mundy, James Wood, Patricia Russo, David Komansky and Kathryn Turner; and John Ryan, Vincent Sweeney, E. Kevin Moore, Jack Wyszomierski, and Joseph LaRosa.

3 The initial complaints were styled *Zhu, et al. v. Schering Plough Corp., et al.*, No. 03-CV-1204 (D.N.J.) and *Fields, et al. v. Schering-Plough Corp., et al.*, No. 03-CV-1985 (D.N.J.).

appointed as interim Liaison Counsel for Plaintiffs, and the caption was amended to read *In re Schering-Plough Corp. ERISA Litig.*, No. 03-CV-1204 (D.N.J.).[4]

7. Plaintiffs filed their consolidated complaint For Breach Of Fiduciary Duty Under ERISA on October 6, 2003.

8. Lead Counsel conducted a thorough investigation into the claims and allegations prior to preparing the consolidated Complaint. These investigative efforts included: (a) review and analysis of Plan-related documentation and communications, including Plan annual reports to the SEC and Department of Labor; (b) review and analysis of the Company's public disclosures to the SEC; (c) analysis of the Company's publicly disseminated financial statements; (d) review of media reports and public financial analyst reports; (e) review and analysis of voluminous publicly-available materials – *e.g.*, media reports and filings in factual related cases – with regards to the factual predicates outlined in the consolidated complaint; (f) interview of a number of participants, including the Plaintiffs, as well as potential fact witnesses; (g) extensive research of the applicable law with respect to the claims asserted in the consolidated complaint as well as Defendants' potential defenses thereto; and (h) monitoring and evaluating the performance of Schering-Plough Stock during and after the proposed class period. Thereafter,

---

[4] BTKMC at the time of appointment as interim Lead Counsel was known as Schiffrin & Barroway, LLP and Liaison Counsel Lite DePalma was known as Lite DePalma Greenberg & Rivas, LLC.

Lead Counsel reviewed newly filed and published public filings, annual reports, press releases and other public statements as part of their ongoing investigation.

9. On June 29, 2004, the District Court granted Defendants' motion to dismiss finding that Plaintiffs lacked standing to sue on behalf of the Plan. *In re Schering-Plough Corp. ERISA Litig.*, 387 F. Supp. 2d 392 (D.N.J. 2004). On appeal, the Third Circuit reversed and remanded the case for further proceedings on the merits. *In re Schering-Plough Corp. ERISA Litig.*, 420 F.3d 231 (3d Cir. 2005).

10. On March 30, 2006, Plaintiffs filed their First Amended Consolidated Complaint (defined in the Settlement Agreement as the "Complaint") (Docket No. 54-1), which Plaintiff Wendel, a Plan participant and former employee of Schering-Plough, joined. The Complaint provides details regarding the operation and administration of the Plan and alleges, *inter alia*, that Defendants breached their fiduciary duties by allowing the Plan to purchase and hold shares of Schering-Plough Stock when Schering-Plough Stock was an imprudent investment and by maintaining the Plan's pre-existing heavy investment in Schering-Plough Stock when Schering-Plough Stock was no longer a prudent investment for the Plan.

11. On September 27, 2006 and October 12, 2006, Plaintiffs Zhu and Fields voluntarily dismissed their claims against Defendants leaving Plaintiff Wendel as the sole class representative.

II. SUMMARY OF THE LITIGATION

A. Motion Practice

12. This complex litigation was aggressively contested by Defendants from the outset. On May 1, 2006, Defendants answered the Complaint but moved to dismiss Plaintiffs' misrepresentation/failure to disclose claim. The Court denied Defendants' motion to dismiss.

13. On August 27, 2007, Plaintiff Wendel moved to certify a class. On January 31, 2008, the Honorable Mark Falk, U.S.M.J. issued a Report and Recommendation approving certification, which the District Court adopted on September 30, 2008.

14. On December 29, 2008, Defendants appealed the District Court's decision certifying the class to the Third Circuit. The issues on appeal centered on a Separation Agreement signed by Plaintiff Wendel,[5] which contained a general release and a covenant not to sue. *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 593 (3d Cir. 2009).

15. Following extensive briefing and argument on the issues on appeal, the Third Circuit held that ERISA § 410(a) did not render the release and covenant not to sue signed by Plaintiff Wendel void as against public policy. *Id.* at 594.

16. Ultimately, the Third Circuit vacated the class certification order and

---

5 Plaintiff Wendel's separation agreement is attached hereto as Exhibit B.

remanded the case for proceedings consistent with its opinion. *Id.* at 605.

B. Settlement Negotiations

17. In early 2007, the parties engaged in an extensive exchange of information and analysis regarding their respective settlement positions, including information relating to: the performance of Plan investments during the relevant period; insurance availability to satisfy any possible judgment, including documents concerning coverage under the fiduciary insurance policy; settlements in analogous cases; and the precise number of shares of Schering-Plough Stock held by the Plan.

18. Following receipt of this information, on April 20, 2007, the Parties filed mediation statements with the District Court. In preparation for the mediation, Plaintiff submitted a detailed, twenty-five page brief and exhibits thereto in which they assessed key issues including the elements of their claims, defenses, recent caselaw developments, and damages. The briefing and negotiations were lengthy and both sides argued their respective positions strenuously.

19. On April 25, 2007, the Parties participated in a mediation conference and presented their respective arguments. After the mediation session did not result in an agreement, the Parties continued to litigate the case, all the while continuing to discuss the possibility of settlement.

20. On September 17, 2008, the Parties engaged in a mediation session before the Honorable Nicolas Politan, U.S.D.J. (retired), but a resolution was not reached. On December 17, 2008, the Parties participated in another mediation session with Judge Politan, which also failed to result in an agreement.

21. Finally, in February 2010, following further settlement discussions and an additional session before Judge Politan, the Parties reached substantial agreement on terms of settlement.[6]

22. Following this agreement in principle, Lead Counsel spent significant time and effort negotiating the details of the Settlement Agreement itself. The parties finally executed the Settlement Agreement on July 15, 2010, which Plaintiff filed with the Court in connection with their motion for Preliminary Approvals (Dkt. No. 140), which the Court approved on September 23, 2010 (Dkt. No. 145). The resulting settlement was the product of arms'-length bargaining, achieved with the aid of an impartial mediator and third-party experts.

III. THE SETTLEMENT

23. The Settlement Agreement provides that Defendants shall create a fund of $8.5 million for the benefit of the Plan, which in accordance with Plaintiff's proposed plan of distribution, will then be paid to the current and former participants. *See* Proposed Plan of Allocation attached hereto as Exhibit D.

---

[6] Judge Politan has submitted a declaration regarding his efforts in mediating this litigation to a successful conclusion, which, is attached hereto as Exhibit C.

24. The allocation method set forth herein is the basic approach that has been used in settlements of other 401(k) company stock cases, and it has been approved by judges in numerous cases. *See, e.g.*, Plan of Allocation and Final Judgment in *Lewis v. El Paso Corp.*, No. 02-CV-4860 (S.D. Tex. Apr. 27, 2009) (attached hereto as Exhibit E); Plan of Allocation and Order and Final Judgment in *In re Loral ERISA Litig.*, No. 03-CV-9729 (LTS) (S.D.N.Y. Jan. 20, 2009) (attached hereto as Exhibit F); Plan of Allocation and Order Approving Plan of Allocation in *In re Calpine Corp. ERISA Litig.*, No. C 03-CV-1685 (SBA) (N.D. Cal. Dec. 17, 2008) (attached hereto as Exhibit G).

25. Plaintiff has entered into this Settlement with full and compressive understanding of the strengths and weaknesses of their claims, which are based on Lead Counsel's extensive investigation during the prosecution and discovery of information n this Action. This Settlement is truly an exceptional result.

26. Moreover, on October 29, 2010, Merck & Co., Inc, the successor to Defendant Schering-Plough Corporation, and the Merck & Co., Inc. Management Pension Investment Committee, as successor to Defendant Schering-Plough Investment Committee retained an independent fiduciary, Evercore Trust Company, N.A. ("Evercore"), to review the Settlement and provide a recommendation whether to accept or reject the Settlement on behalf of the Plan. On November 19, 2010, Evercore informed the parties that, based on their

evaluation of the relevant documents and information associated with the action and the Settlement, the $8.5 million cash Settlement was reasonable. Evercore's report endorsing the settlement is attached hereto as Exhibit H.

IV. SETTLEMENT ADMINISTRATION

27. Pursuant to the Court's Preliminary Approval Order, Individual Notice was effectuated on October 12, 2010 respectively. *See* Affidavit of Anya Verkhovskaya of A.B. Data, ("A.B. Data Affidavit) at ¶ 9, attached hereto as Exhibit I.

28. My firm also supervised the launching and maintenance of the dedicated settlement website http://www.ScheringPloughERISAsettlement.com by A.B. Data, which was launched October 11, 2010. A.B. Data Affidavit at ¶ 13. From October 11, 2010 through December 1, 2010, the website's homepage received 164 "hits." *Id.* Both the website and the Individual Notice, which was mailed to Settlement Class Members, listed the email address ScheringPloughERISASettlement@btkmc.com, for Class Members to send email inquiries.

29. In addition, each form of notice also contained a toll-free number, 1-866-233-8545, for the Plan's participants to call if they had any questions or concerns regarding the proposed Settlement. This toll-free number was established on or about October 11, 2010. The toll-free number contained a pre-recorded

message which gave an overview of both the Settlement and the approval process.

30. In addition, the toll-free number permitted Class Members to leave a voice message if they had further questions. My firm assisted with responding to those inquires. From October 11, 2010 through December 1, 2010, some 67 voice messages have been received. A.B. Data Affidavit at ¶ 12.

31. Co-Lead Counsel have received only two written responses to the Settlement thus far. The objections of Theresa Penn-Lavery and James Sharits are attached hereto as Exhibits J and K respectively.

V. ATTORNEYS' FEES AND EXPENSES

32. Consistent with the law in the Third Circuit, Lead Counsel request an award of attorneys' fees and expenses from the Settlement Fund based on a percentage of the Settlement Fund recovered for the Class. *See, e.g.*, *Kolar v. Rite Aid* Corp., No. 01-CV-1229, 2003 WL 1257272, *4 (E.D. Pa. Mar. 11, 2003) (ERISA class action settlement, finding, "[a]s this is a common fund settlement, it seems to us reasonable to apply the percentage approach . . . ."). Lead Counsel requests $2,550,000.00 of the $8.5 million award to the Settlement Class, or approximately 30% of the total recovery.

33. The Third Circuit set forth with specificity the factors that a court should consider in evaluating requested attorneys' fees in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000). The *Gunter* factors include: (i) the

size of the fund created and number of persons benefitting from the settlement; (ii) the presence/absence of substantial objections to the fee; (iii) the skill of plaintiff's counsel; (iv) complexity and duration of the litigation; (v) the risk of nonpayment; (vi) amount of time devoted to the litigation; and (vii) awards in similar cases. *Id.* at 195.

34. As described below and at length in the Fee Memorandum, an analysis of the *Gunter* factors, regardless of the weight each individual factor is accorded, supports the requested fee.

A. The Size and Nature of the Common Fund Created, and the Number of Persons Benefitted by the Settlement to Date

35. Pursuant to the parties' Settlement Agreement, the Class will obtain an immediate and certain benefit of $8.5 million plus accrued interest, less attorneys' fees, expenses and the Case Contribution award for the Named Plaintiff as ordered by the Court. The $8.5 million fund is an excellent result for Settlement Class members, who number a little over 20,000. The Settlement Class is comprised of all participants and beneficiaries of the Plan during the Settlement Class Period. Thus, many participants of the Plan, current and former, will receive a significant financial benefit, without having to go through the time and expense of separate litigation. This is no small feat given the obstacles facing Lead Counsel in this case.

36. Here, the benefit reached for the Plan and its participants is significant

in light of the attendant risks of the litigation. Defendants would have surely raised compelling arguments during the course of this litigation through summary judgment and trial, if necessary.

37. Defendants would likely have raised the complex issue of determining the appropriate points to begin and end the Class Period, including arguing that it should either begin and/or end at a point that would make proving damages much more difficult, if not impossible. Moreover, proving damages caused by fiduciary misconduct would have been a painstaking, complex and expensive process, requiring expert assistance and involving myriad calculations to enable the fact-finder to determine the effect of the alleged imprudence.

38. Plaintiff thus respectfully submits that the complexities and concomitant risks of establishing damages, when weighed against the substantial and immediate benefits of the proposed $8.5 million Settlement to the Class as a whole, militate in favor of settlement approval.

B. The Presence or Absence of Substantial Objections to the Request for Fees

39. Following the Court's granting of preliminary approval to the proposed Settlement, Lead Counsel undertook a comprehensive notice program directed to Class members. The Notice informed Class members that Lead Counsel would seek fees not in excess of 30% of the Settlement, reimbursement of

litigation expenses and a class representative Case Contribution Award. *See* p.3 of the Notice, attached as Exhibit 1 to the A.B. Data Affidavit, which is Exhibit I attached hereto. In addition, the Notice advised of the option and process for objecting to the Settlement Agreement and its terms, as well as any requested attorneys' fees and the case contribution award.

40. Despite the fact that just under 21,000 notices were disseminated to Settlement Class members, Lead Counsel has received only 2 to responses to the proposed Settlement with only one constituting an objection and none constituting an objection to a (then potential) fee request.

41. The first response, an objection, filed by a purported Settlement Class Member Theresa Penn-Lavery on October 21, 2010 objects to class action lawsuits in general, not the specific terms of this Settlement.[7] *See* Exhibit J hereto. This objection does not merit serious consideration. Summary objections, which lack any explanation or authority, such as the objection here, should be overruled. *See In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002) (rejecting broad, unsupported objections because "[they] are of little aid to the Court."). The objector does not make a serious challenge to the more important point before the Court – that is, whether the requested fee is reasonable in light of all the circumstances present in this case. As explained in detail in the

[7] Ms. Theresa Penn-Lavery does not identify whether she is a Settlement Class member.

Fee Memorandum, the fee here is commensurate with the recovery for the Plan.

42. Moreover, even if the Penn-Lavery objection could be considered an objection to Lead Counsel's fee request, it would only comprise approximately 0.005% of affected past and current participants of the Plan who received individual notice of the Settlement. One objection to the proposed fee in relation to the large number of notices thus weighs heavily in favor of granting the fee request.

C. The Skill and Efficiency of Plaintiff's Counsel

43. The skill and efficiency of Lead Counsel weighs in favor of approval of the requested attorneys' fees. As set forth further in Plaintiff's Final Approval memorandum and Plaintiff's Fee Memorandum, Lead Counsel undertook to represent Plaintiff in an ever-developing area of the law, and took a substantial risk that they would not be compensated at all for their efforts. Nevertheless, Lead Counsel's efforts produced an excellent result which will greatly benefit the members of the Class.

44. BTKMC is well-regarded nationally for their successful representation of clients in complex ERISA class action matters. *See* BTKMC Firm Resume attached hereto as Exhibit L. Acknowledging the firm's history and track record of impressive results, courts have not hesitated to appoint BTKMC as class counsel in numerous ERISA breach of fiduciary duty class actions akin to

this Action.

45. For example, during the final fairness hearing in *In re Bear Stearns Co., Inc. Sec., Derivative, and ERISA Litig.*, Judge Sweet noted that BTKMC's "experience in the area of ERISA breach of fiduciary class actions has been recognized by courts throughout the country who have appointed them lead or co-class action counsel in many cases alleging causes of action similar to those claimed here." *See In re Bear Stearns Cos., Inc. Securities, Derivative and ERISA Litig.*, 08 MDL. No. 1963, 2009 WL 50132, at *11-*12 (S.D.N.Y. Jan. 5, 2009), attached hereto as Exhibit M.

46. Similarly, in approving the settlement in *In re Honeywell ERISA Litig.*, No. 03-CV-01214 (DRD), the Honorable Dickinson R. Debevoise stated during the final fairness hearing:

> Plaintiffs' counsel undoubtedly possess great skill and experience in this kind of case and have exhibited that experience during the course of these proceedings.
>
> * * *
>
> ERISA class actions are a relatively new phenomenon, presenting complex issues as the courts deal with the complicated ERISA statute. Faced with this statute, counsel had to engage in extensive factual explorations and address legal problems both in the context of class certification and during the course of the motion to dismiss.

Final Fairness Transcript, *In re Honeywell ERISA Litig.*, No. 03-CV-01214 (DRD) (D.N.J. July 19, 2005), at p. 40 (attached hereto as Exhibit N).

47. The skill and expertise of Lead Counsel in this Action is best demonstrated, however, by the fact that they obtained a multi-million dollar settlement in this case despite the quality and resources of Defendants' counsel – lawyers from a skilled and highly respected law firm.

48. This Settlement was achieved by Lead Counsel – who include some of the preeminent ERISA class action attorneys in the country – with decades of experience in prosecuting and trying complex actions. Lead Counsel's experience and skill was demonstrated by the effective prosecution of this Action, including the substantial settlement entered into with Defendants. Moreover, Lite DePalma who are highly experienced in the litigation of these complex ERISA actions, greatly assisted Lead Counsel greatly in this Action.[8] In short, the result achieved is the clearest reflection of counsel's skill and expertise. This factor thus strongly supports endorsement of the requested fee.

D. The Complexity and Duration of the Litigation

49. The complexity of the issues involved in this litigation as well as the duration of time it has taken to litigate this Action favors an award in the amount requested.

50. ERISA class actions, in addition to being relatively novel, are also extremely complex and involve the intricate application of a decidedly complicated

---

8 The firm resume of Lite DePalma is attached hereto as Exhibit O.

statute. As one court recently noted, "ERISA law is highly complex and quickly-evolving area of the law." *Smith v. Krispy Kreme Doughnut Corp.*, No. 05-CV-00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007); *see also In re Sprint Crop. ERISA Litig.*, 443 F. Supp. 2d 1249, 1270 (D. Kan. 2006) ("The applicable law is complex, unsettled, and in a rapid state of development").

51. Further, the circumstances surrounding a difficult settlement are recognized as increasing the complexity of a case. *See In re Lucent Technologies, Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 434 (D.N.J. 2004) ("Additionally, the settlement negotiations were inherently complicated, and . . . Lead Counsel performed above and beyond the call of duty in all facets of the negotiations process").

52. This Action was especially complex, spanning over seven years and involving litigation both at the District Court level as well as before the Third Circuit Court of Appeals. Moreover, as noted *supra*, the parties participated in four vigorously contested mediation sessions before reaching the Settlement.

53. Were the Action to continue, Plaintiff believes it very likely Plaintiff's motion for class certification would be granted. Thereafter, merits discovery would begin full bore, with written discovery, voluminous document production and review, numerous depositions and expert reports and discovery as a prelude to dispositive motions, trial, and likely appeals, thus delaying final resolution of

Plaintiff's claims for years. These efforts would consume monumental time and expense by the Parties as well as the precious resources of this Court, with Plaintiff and the Class possibly obtaining a recovery below the proffered settlement, or no recovery at all.

54. Lead Counsel has devoted thousands of hours to the prosecution and settlement of this Action, said efforts beginning well before the initial complaint was filed. Accordingly, this factor strongly supports the requested fee award.

55. Indeed, even a cursory review of the *Gunter* factors leads to the conclusion that the requested fee is eminently reasonable when viewed in light of the significant work Lead Counsel has done in this litigation and the significant Settlement achieved.

VI. BTKMC'S LODESTAR AND EXPENSES

56. From the inception of this case until November 30, 2010, my firm performed 15,688.89 hours of work in connection with this Action.

57. The schedule attached hereto as Exhibit P is a summary indicating the amount of time spent by each attorney of my firm who was involved in this Action; the lodestar calculation is based upon my firm's billing rates. They have been approved by numerous courts around the country in awarding fees in class action cases. For attorney(s) who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such attorney(s) on his or her final

day of association with my firm.

58. As noted *supra*, the total number of hours expended on this litigation by my firm is 15,688.89. The total lodestar for my firm is $5,517,343.75.

59. The hourly rates utilized by my firm in computing its lodestar are at or below its usual and customary hourly rates charged for ERISA breach of fiduciary duty and other complex litigation. No upward adjustment in billing rate was made, notwithstanding the contingency and risk of the matters involved, the opposition encountered, the preclusion of other employment, the delay in payment, or other factors present in this case which would justify a higher rate of compensation.

60. The time and services provided by my firm for which fees are sought in the petition are reflected in contemporaneously maintained records of my firm. All of the services performed by my firm in connection with this litigation were reasonable and necessary in the prosecution of this case. No time is included in the fee petition for work in connection with the fee and expense application or accompanying documents, including this declaration.

61. My firm's lodestar figures also do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the firm's billing rates.

62. As detailed in the schedule attached hereto as Exhibit Q, my firm has incurred a total of $194,408.47 in unreimbursed expenses in connection with the

prosecution of this litigation.

63. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other materials, and are an accurate contemporaneous recordation of the expenses incurred.

VII. OTHER FIRM'S LODESTARS

64. The Declaration of Joseph J. DePalma on behalf of Lite DePalma is attached hereto as Exhibit R, and includes the firm's lodestar and expenses incurred in this Action in the form of Exhibits A and B thereto.

VIII. CASE CONTRIBUTION AWARDS FOR NAMED PLAINTIFF

65. "Numerous courts have recognized the authority to award compensation to named plaintiffs in class action litigation." *Mehling v. New York Life Ins. Co.*, 48 F.R.D. 455, 467 (E.D. Pa. 2008); *see also Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. Oct. 3, 2000) ("[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation."). The trial court has discretion to award an incentive to the representative plaintiff.

66. Here, class representative Michele Wendel significantly contributed to the litigation, by among other things, sitting for a deposition, and consulted with

Lead Counsel throughout the litigation including during settlement negotiations. Her initiative, time, and effort were essential to the successful prosecution of the case and resulted in a significant recovery for the Class. Moreover, her willingness to step forward and endure the litigation process should be appropriately rewarded. Accordingly, Lead Counsel ask that Michele Wendel, as the Named Plaintiff, be recognized with a case contribution award of $10,000.

67. This award is within the range typically awarded under similar circumstances. *See, e.g.*, *In re National City Corp. Sec., Derivative & ERISA Litig.*, No. 109-nc-70002-SO (N.D. Ohio Apr. 26, 2010) (Order and Final Judgment) (awarding $20,000 each to Class Representatives); *Mehling*, 48 F.R.D. at 467 (approving awards of $15,000 and $7,500 for named plaintiffs); *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2008 WL 63269, at *7-*8 (E.D. Pa. Jan. 3, 2008) (approving a $30,000 award for each class representative); *Rankin v. Rots*, No. 02-CV-71045 (E.D. Mich. June 27, 2006) (awarding $10,000 to each class representative); *In re Dynegy, Inc. ERISA Litig.*, No. H-02-3076 (S.D. Tex. Dec. 10, 2004) (awarding $10,000 to the named plaintiff, to be paid from the common fund); ; *In re Household Int'l, Inc. ERISA Litig.*, No. 02-CV-7921 (N.D. Ill. Nov. 22, 2004) (awarding $10,000 to each class representative); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at *18-*19 (E.D. Pa. June 2, 2004) (finding that an award of $25,000 for each class representative is

comparable to other awards in this District).

Pursuant to 28 U.S.C. § 1746, I, Joseph H. Meltzer, declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed this 6th day of December, 2010 at Radnor, Pennsylvania.

Joseph H. Meltzer
BARROWAY TOPAZ KESSLER MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056